

## **REMARKS**

### **I. STATUS OF THE CLAIMS**

Claims 14, 17, 20, 23, 24, and 29-35 were pending at the time of the Action. Claim 29 has been canceled. Claims 14, 23, 24, 34, and 35 have been amended. Claims 36-41 are new. No new matter has been added.

Claims 14, 17, 20, 23, 24 and 30 - 41 are now pending.

### **II. AMENDMENT TO THE SEQUENCE LISTING**

Applicants include in the sequence listing as SEQ ID NO:409 (SCN3A), SEQ ID NO:410 (Asp43DEL SCN3A), and SEQ ID NO:411 (Iso1035Val SCN3a). SEQ ID NO:65 comprises non-coding sequences as well as nucleotides coding for the SCN3A protein of SEQ ID NO:67. One skilled in the art can readily identify the appropriate initiator methionine based on the translation of SEQ ID NO:65 that is provided as SEQ ID NO:67. Based on the translation of SEQ ID NO:65, one of skill can determine the nucleotide position corresponding amino acid 43 and amino acid 1035 of SCN3A. A simple computer search of SEQ ID NO:65 can be used to identify the nucleic acid mutation related to SEQ ID NO:410 (Asp43DEL SCN3A, CAA GAT ATT GAT GAT GAG) (specification page 53, line 25) and SEQ ID NO:411 (Iso1035Val SCN3a) (mutation Val1035Ile, AAA TAC RTA ATC GAT). No new matter is added by including SEQ ID NOs 409-411.

### **III. REJECTIONS UNDER 35 U.S.C. §112, SECOND PARAGRAPH**

Claims 14, 17, 20, 23, 24, and 29-33 are rejected as being indefinite for requiring a specific sequence and concurrently a variant of the specific sequence. In addition, claims 14, 17, 20, and 24 are rejected as being indefinite due to ambiguity in subpart (f) of claim 14.

Applicants have clarified the claims and addressed the indefiniteness issues raised in the final Office Action. The rejections are now moot.

### **IV. REJECTIONS UNDER 35 U.S.C. §112, SECOND PARAGRAPH, FIRST PARAGRAPH (WRITTEN DESCRIPTION)**

Claims 34 and 35 stand rejected under 35 U.S.C. § 112, first paragraph as not complying with the written description requirement. Applicants have clarified claims 34 and 35 and believe them to satisfy 35 U.S.C. §112, first paragraph. Applicants request withdrawal of the rejections.

### **V. REJECTIONS UNDER 35 U.S.C. § 102**

Claims 14, 23-24, and 34-35 stand rejected as being allegedly anticipated by Lu *et al.*

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. MPEP § 2131 citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Lu *et al.* does not describe all elements of the claimed invention and does not anticipate the claimed invention. Applicants request the withdrawal of the rejection.

## **VI. REJECTIONS UNDER 35 U.S.C. § 103**

Claims 14, 17, 20, 23-24, 30-31, and 34-35 stand rejected as being allegedly obvious in light of Lu *et al.* in view of Delgado.

To establish a *prima facie* case of obviousness the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

For reasons set forth above Lu *et al.* when combined Delagado does not teach all elements of the claimed invention. Therefore, a *prima facie* showing of obviousness has not been established. Withdrawal of the rejection is requested.

## **VII. CONCLUSION**

Applicants believe that the present document is a full and complete response to the Action dated April 27, 2007. The present case is in condition for allowance, and such favorable action is respectfully requested.

The Examiner is invited to contact the undersigned Attorney at (512) 536-3167 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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